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held that recognition of a right in the jurisprudence of a State was essential to its enforcement in a federal court of equity, even though the position of the courts in that State was opposed to that maintained under the rules of general equity jurisprudence; and this distinction has had a determining influence in subsequent decisions. *Fleitas v. Richardson* (1892) 147 U. S. 550; *In re Talbot* (1901) 110 Fed. 924. The prevailing judges in the principal case seem to feel that their decision is not altogether incompatible with this distinction, but that, as a married woman's separate estate is regarded by the Massachusetts courts as a proper subject of equity jurisdiction, the refusal of those courts, though based upon the words of the statute above quoted, to protect it in such a case as that under consideration, is to be considered as being in the nature of the denial of a remedy. But, apart from this, they declare that it remains for the federal courts not only to occupy the field of equitable rights according to their own rules, but also to determine what are the boundaries of that field. Admitting this to be so, it may be said that the federal courts are extending rather than occupying the field of their jurisdiction, when they set aside State rules in matters which are essentially local and in respect of which the federal courts are held to be bound by the State adjudications. *Lippincott v. Mitchell* (1876) 94 U. S. 767; *Allen v. Massey* (1872) 17 Wall. 351. The decisions in these cases related to questions of real and personal property, but such questions are hardly more local in their nature than the public policy of the State with reference to marriage and to the property rights which prevail between husband and wife; and it has been held to be the privilege of the State to determine its own rules of policy on those subjects. See *Meister v. Moore* (1877) 96 U. S. 76; *Maynard v. Hill* (1887) 125 U. S. 190. This privilege would seem to be encroached upon by the result reached in the principal case.

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NEW TRIALS AFTER VERDICTS OF ACQUITTAL.—It is a fundamental principle of the common law that no one can be placed twice in jeopardy for the same offence and in a slightly modified form this principle has been incorporated into our national Constitution. 5th Amend. U. S. Const. At one time it was vigorously insisted that the principle should be made to apply not only to appeals by the State after an acquittal, but to the defendant after a conviction, and that the right of appeal in each case should be denied. *U. S. v. Gilbert* (1834) 2 Sumn. 19. The later and more general view permits the defendant, under proper conditions, to secure a new trial after conviction. *U. S. v. Keen* (1839) 1 McLean 429, but still withholds from the State the right to secure a new trial after a proper acquittal. 1 Bish. Crim. Law §§ 979, 992. The principle in its various applications governs not only felonies but misdemeanors and qui tam actions for penalties. *State v. Solomons* (1834) 27 Am. Dec. 469 and note. All returns of not guilty by a jury, however, are not acquittals within the rule which prohibits an appeal by the State. 1 Chitty Crim. Law \*657. In qui tam actions for penalties the plaintiff may, after acquittal, have a new trial because of a misdirection by the judge as to the law, or because

of fraud or malpractice by the defendant. *State v. Solomons*, supra. Similar limitations upon the verdict of acquittal in trials of misdemeanors have been applied in the following cases: failure of the defendant to give proper notice of trials, *Rex v. Furser* (1753) Say. 90; material irregularities in the proceedings, *State v. Sweptson* (1878) 79 N. C. 632; keeping away witnesses, *Pruden v. Northrup* (1789) 1 Root 93. The limitations upon the rule as applied to felonies, however, are not so clearly defined, as few cases involving the precise point have come before the courts. The principles governing them are to be found rather in cases dealing with appeals by the defendant. In two English cases, *Reg. v. Millis* (1844) 10 Clark & Fin. 534, and *Reg. v. Chadwick* (1847) 11 Q. B. 205, appeals were entertained after irregular acquittals on charges of felony, but the doctrine of these cases has been repudiated in the United States, *U. S. v. Sanges* (1891) 144 U. S. 310, and the common law principle reaffirmed in England, *Queen v. Russell* (1854) 3 E. & B. 342. According to a dictum of Lord Holt in *King v. Bear* (1698) 2 Salk. 646, an acquittal secured by fraud on a charge of perjury was no bar to a subsequent action.

The theories upon which an improper acquittal is held to be no bar to a subsequent trial of the defendant for the same offense are that jeopardy though once begun is not exhausted by an improper acquittal, *State v. Lee* (1894) 48 Am. St. Rep. 202; or that real jeopardy never began, 1 Bish. Crim. Law § 1031. However, until a proper acquittal has been pronounced the jeopardy of the defendant is not such as will avail him for a defense in a subsequent action, *Cooley Const. Lim.* 399. The cases in which improper acquittals were held to be no bar were cases in which the acquittals were declared void either because of the fraud of the defendant or because of circumstances over which the court had no control. The question whether an improper action of the judge will render an acquittal void appears never until recently to have been precisely adjudicated. In the case of *People v. Stall* (1904) 77 Pac. 818, the trial judge had directed an acquittal immediately after the opening statement of the prosecution. A new trial was granted, the court saying that by an act so clearly without his authority the trial judge had lost jurisdiction and the acquittal was a nullity. The jurisdiction of a court in rendering a judgment is a limited one. In *re Bonner* (1893) 15 U. S. 242. A mere error in the charge to the jury is not ground for a new trial after an acquittal; but the acquittal can be secured only by the verdict of the jury, and that verdict should not be rendered until after the evidence of at least one side is in. Stephen on Pleading \*83. The opening statement of the prosecution is not evidence, and whether or not that statement shall be made is usually optional with the State. A direction to the jury before any evidence is in is contrary to the whole theory of the trial by a jury, since it is their function to pass upon the evidence, and it would have been no less arbitrary for the judge in the principal case to have directed an acquittal before any statement by the prosecution. An acquittal procured in a court without jurisdiction is void, *People v. Connor* (1894) 142 N. Y. 130, and it would seem that the same principle should govern in this case.